

# 2020 has put the South African business rescue procedure on steroids

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The onset of the Covid-19 pandemic in 2020 created a new playing field for the restructuring and business rescue of financially distressed companies.

South Africa has seen major companies such as SAA, SA Express, Comair, Edcon, Phumelela, Busby, and others, having no choice but to file for the formal business rescue procedure offered by Chapter 6 of the 2008 Companies Act. In all of these instances, these entities could no longer hold on and where severe cash flow constraints prompted the need for such drastic intervention. In each case, the pressure brought about by creditors wanting payment of debts due, required the imposition of a statutory moratorium on claims against the company and the need for an independent business rescue practitioner to be appointed who would supervise the company's affairs and business in the hope of a restoration to solvency.

Covid-19 has affected businesses across the world in a big way. Financial distress in these unprecedented times is completely industry agnostic and affects sectors across the board. Most badly affected is the global and South African tourism industry, with over 120 million jobs at risk, and where globally it has been reported that USD1 trillion will be lost due to the shrinkage in tourist numbers. It is said that the drop in tourism will shave 1,5% – 2,8% off global GDP, and UN World Tourism figures indicate that international tourism will have dropped by 56% across the globe. As we have seen in South Africa, airlines such as Comair had no choice but to file for business rescue in May 2020, and SAA having already filed in December 2019. Virgin Australia filed for administration in April 2020 and Avianca Airlines (Latin America) filed for Chapter 11 in May 2020. Air Mauritius also filed for administration in April 2020. Reports indicate that 75% of global flight revenues have contracted in the last few months.

McKinseys have reported that the auto industry has had many iconic brands drop off the cliff by 20 – 30% and that profits are expected to fall in this sector by USD100 billion. International banks have had no choice but to revisit their numbers due to cascading bad credit risk. In South Africa, we have seen a R14,6 billion decline (65%) (year on year) in bank headline earnings in the first half of 2020, with a steep rise in credit impairment of 2,3 times.

In the retail and hospitality sectors, there have been many casualties. South Africa is hoping for an uptick in the normally busier December/January peak holiday season, with the prospect of an increase in online sales over the Christmas shopping period and with more people travelling on their end of year holidays.

With companies coming to the end of payment holiday periods provided as a result of the pandemic, and with quieter months for trade looming in early 2021, we could see an increased number of companies filing for much needed rescue mechanisms next year.

Has the Covid-19 pandemic been a boon for business rescue practitioners and insolvency and restructuring professionals?... controversially the answer must be yes. The number of business rescue filings has definitely increased with CIPC reporting that we have had 233 filings so far this year, the majority in Gauteng, followed by the Western Cape and KZN. In the main we have seen fallout (in descending numbers) in manufacturing, wholesale and retail, real estate, accommodation and food service activities and construction.

In South Africa there is a dire need for experienced restructuring professionals to get involved with struggling companies and where urgent intervention is required to get the company back onto its feet. Business rescue envisages a process where the business rescue practitioner can provide a breathing space (moratorium) for the company and its management and where the practitioner is placed into a position where

he/she can restructure the burdensome debt of the company. In addition, prejudicial contracts can be renegotiated and management can be more efficiently deployed to the more profit generating divisions of the enterprise.

Compromise would be the name of the game and where creditors would generally be expected to take a "debt haircut" so that the company can rid itself of historical debt, enabling it to trade on a solvent basis into the future. Placing a restructured company back into the South African market must be good for that company, for its suppliers, employees and, most importantly, for the South African economy. The extent of continued filings for rescue will be seen in the months ahead.



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